

201022025



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 11 2010

UICs: 408.00-00
408.03-00

SE: T: EP: RA: T3

LEGEND:

Taxpayer A:

Guardian B:

Taxpayer C:

Taxpayer D:

Amount 1:

Amount 2:

Amount 3:

Year 1:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

201022025

Date 8:

Company M:

IRA X:

Account Y:

Court T:

County W:

State X:

Case 1:

Dear . :

This is in response to the , request for letter rulings under section 408(d) of the Internal Revenue Code ("Code"), submitted on your behalf by your authorized representative, as supplemented by correspondence dated , and . The following facts and representations support your ruling request.

Taxpayer A, whose date of birth was Date 1, 19 , is a resident of State X. Taxpayer A formerly maintained IRA X with Company M. During Year 1, Taxpayer A received a total distribution in the amount of Amount 1 from her IRA X. Said distribution was placed into Account Y, a checking account, on or about Date 2, Year 1.

By Petition dated Date 3, 20 , Taxpayer C, the son of Taxpayer A, petitioned Court T, County W, State X, to declare Taxpayer A incapacitated and in need of a guardian. On Date 4, 20 , Court T, in Case 1, found Taxpayer A to be an incapacitated person, and on Date 5, 20 , a Commission of Guardians was issued naming Guardian B as Guardian of the property of Taxpayer A.

Court T also appointed, on Date 7, 20 , a geriatric care manager, Taxpayer D, for Taxpayer A. An affidavit which was attached to the instant request for letter ruling, dated Date 6, 20 , indicates that Taxpayer D is a registered nurse and a geriatric case

manager. It also indicates that Taxpayer D has a Masters Degree in Nursing. The Date 6, 20 , affidavit indicates that Taxpayer D sees Taxpayer A on a regular, almost weekly, basis and has had ample opportunity to interact with Taxpayer A. Taxpayer D also indicates that she has reviewed Taxpayer A's medical records and, based on her review of said records and her contact with Taxpayer A, Taxpayer D opines that Taxpayer A "...has been suffering from diminished cognitive ability dating back to at least 20Taxpayer A has a diagnosis of dementia and other progressive illnesses which are indicative of her cognitive decline over the past years".

The affidavit continues by stating that "...It is my professional opinion, based upon my personal knowledge of Taxpayer A, a review of her medical records and discussions with her treating physicians that Taxpayer A has suffered from diminished capacity dating back to at least 20 and she would have been unable to manage her affairs and finances...it is my opinion that Taxpayer A would have been unable to understand the implications of a withdrawal from a qualified account and the tax ramifications of such a transaction".

20 predates the year in which Taxpayer A withdrew Amount 1 from IRA X.

As of the date of this ruling request, the assets distributed from IRA X which is the subject matter of this ruling request, other than Amount 2, remain in Account Y referenced above.

It has been represented that Taxpayer A's calendar year 2003 Federal Form 1040 was filed on or about Date 8, 20 . Thus, 20 is an "open" tax year.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That, pursuant to Code section 408(d)(3)(I), except as noted below, Guardian B, on behalf of Taxpayer A, is granted a period, not to exceed 60 days, as measured from the date of this ruling letter, to contribute, by means of a rollover contribution (or contributions), Amount 3, the difference between Amount 1, the amount distributed from IRA X during 2003, and Amount 2, the amount used by Taxpayer A, into one or more traditional IRAs set up and maintained in the name of Taxpayer A.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Code section 408(d)(3)(E) provides, in summary, that this paragraph does not apply to any amount required to be distributed in accordance with subsection (a)(6) or (b)(3) (Code section 401(a)(9) required distributions).

Code section 401(a)(9)(C) provides, in general, that with respect to an IRA described in Code section 408, required distributions must begin no later than April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 $\frac{1}{2}$. Thus, Taxpayer A's "required beginning date" was April 1, 2004.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a

rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

With respect to your ruling request, we note that Taxpayer A's failure to complete a timely rollover of Amount 1 distributed from her IRA X referenced herein was due to her mental incapacity. Evidence submitted in conjunction with the instant ruling request asserts that, since at least calendar year 20 , Taxpayer A lacked the capacity to understand the ramifications of her actions. Furthermore, shortly after Taxpayer A withdrew Amount 1 from her IRA X she was placed under a guardian which placement supports the proposition that Taxpayer A did not comprehend the nature of her action when she accomplished the Year 1 withdrawal from her IRA X.

Thus, with respect to your ruling request, we conclude as follows:

1. That, pursuant to Code section 408(d)(3)(I), except as noted below, Guardian B, on behalf of Taxpayer A, is granted a period, not to exceed 60 days as measured from the date of this ruling letter, to contribute, by means of a rollover contribution (or contributions), Amount 3, the difference between Amount 1, the amount distributed from IRA X during 2003, and Amount 2, the amount used by Taxpayer A, into one or more traditional IRAs set up and maintained in the name of Taxpayer A.

This ruling letter is based on the assumption that IRA X met the requirements of Code section 408(a) at all times relevant thereto. Furthermore, it assumes that the IRA (or IRAs), into which Guardian B, on behalf of Taxpayer A, will contribute the allowable amounts (or portions thereof) will also meet the requirements of Code section 408(a) at all times relevant thereto.

This letter ruling notes that Taxpayer A's date of birth was Date 1, 19 . Thus, Taxpayer A is over age and, with respect to her IRA X, and any rollover IRA into which allowable amounts will be rolled over, has reached her required beginning date as that term is defined in section 401(a)(9)(C) of the Code. Thus, this letter ruling does not authorize the rollover into an IRA (or IRAs) of amounts required to be distributed with respect to years 20 through 20 .

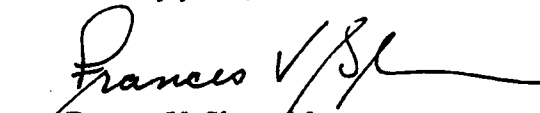
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact _____, Esquire (ID: _____) at either _____ (Phone) or _____ (FAX). Please address all correspondence to SE:T:EP:RA:T:3.

Sincerely yours,


Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose